Supreme Court, U.S.
FILED
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(1)

98-1863

No. _____

# In The Supreme Court Of The United States

October Term 19 ____

**VIRGINIA EARLY RIGGAN**

*Petitioner*

**V.**

**R.W. MOORE EQUIPMENT COMPANY**

*Respondent*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## PETITION FOR WRIT OF CERTIORARI

**Virginia Early Riggan**
**6609 Fayetteville Road**
**Raleigh, North Carolina 27603**

**(919) 772-8992**

28 pp

## QUESTIONS PRESENTED BELOW

The Fourth Circuit Court of Appeals decided by review of the record and the District Court's opinion no reversible error. Motion was appealed from the District's Court order denying a motion for a new trial or judgment not withstanding the verdict. The Supreme Court should exercise its power and reverse the decision of the Fourth Circuit Court. The petitioner was denied a motion for an oral argument.

(1) What happened to the $67,000.00 offered at the pre-trial hearing and the petitioner agreed to accept? This offer was offered by the respondent attorney and accepted by the petitioners attorney as final settlement?

(2) Why was the Equal Pay dropped after the $67,000.00 was offered and the petitioner had agreed to accept?

(3) Why would the attorney for the respondent, when questioned in the Informal Brief for the Fourth Circuit Court, answer the question that the offer of $67,000.00 was for the cost of the defense? How could there have been a cost of the defense when the attorney representing the petitioner accepted the case on a 33-1/3% contingence fee basic, and the petitioner has signed documents to that effect?

(4) Why was the deposition of Dr. Jim Bellard taken and wasn't used in United States District Court?

**The petitioner was seen by Dr. Jim Bellard, with Raleigh Psychiatry?**

**(5) The complete payroll records including application, date of hire, and proof of age of William Lovette III, to prove to the courts that Mr. Lovette replaced the petitioner at a lower wage?**

**(6) Why would the Judge dismiss the Equal Pay and the petitioner knew nothing about this dismissal until the case was about to go to the jury. In checking the documents filed in United States District Court, after the petitioner was offered the $67,000.00 the Equal Pay, which was on file was crossed out with a X with the words indicated "no"? How did the Judge dismiss the Equal Pay, when it was never brought up in court?**

**(7) Why did the Judge dismiss the Sex Discrimination as the trial was just before going to the jury? How could the Judge dismiss the Sex Discrimination when all during the trial, nothing was brought out to the courts by the petitioners attorney regarding the younger male worker which the petitioner was replaced with?**

**(8) Why would the respondents attorney proposed in the jury instructions, that the jury award compensatory damages only for lost wages, no more or no less?**

**(9) Why would the attorney for the respondent propose in the jury instructions, the lost wages**

or benefits because of the age and sex discrimination of the petitioner, then her loss would be that amount which is the difference between what she made while in the employment of the respondent and what the petitioner made afterwards?

(10) Why would the attorney for the petitioner address the jury no money was involved? Was this decision from the proposed Jury Instructions by the respondents attorney?

(11) During the 18 years of employment the petitioner was never given a promotion, was never offer or considered for a promotion. Why did the respondent wait until the petitioner was 50 years of age to replace the petitioner with a younger worker, if age and sex discrimination wasn't the reason for the firing?

## PARTIES TO THE PROCEEDING

**Petitioner, Virginia Early Riggan is a citizen and resident of North Carolina, 6609 Fayetteville Road, Raleigh, N.C. 27603. The Respondent is a business corporation organized and existing under the laws of the State of North Carolina, with the principal office located in Garner, North Carolina and with offices in other cities in the Eastern district. The respondent does business in Wake County, Garner, North Carolina through its President, R. W. Moore, Vice President John Meacham, (vice-president terminated 1998) and Joan Moore, Secretary and Treasurer.**

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In The
Supreme Court of the United States

October Term, 19__

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Virginia Early Riggan *Petitioner*,

V

R.W. Moore Equipment Company
*Respondent,*

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Petition for Writ of Certiorari to the
Supreme Court of the United States
Fourth Circuit Court of Appeals

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Virginia Early Riggan respectfully petition for Writ of Certiorari to review the judgment of the Fourth Circuit Court of Appeals in this case.

## OPINIONS BELOW

The opinion of the Fourth Circuit Court of Appeals is set out in the Appendix, *infra* 1a to 2a. The Opinions of the decisions of the United States District Court, is set out in the Appendix, *infra,* 3a.

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## OPINION BELOW

**The opinion of the United States District Court, Eastern Division of North Carolina, Western Division (Raleigh) was filed March 25, 1998. The petitioners Motion for a New Trial or Judgment Notwithstanding the verdict were denied. The decision of the United States District Court was appealed to the Fourth Circuit Court of Appeals. The opinion of the Fourth Circuit Court of Appeals is set out in CA-96-890-5-BR2 (98-1521). By order filed November 23, 1998, the Fourth Circuit Court denied Virginia Early Riggan petition for rehearing and suggestion for rehearing en banc. A copy of the order denying rehearing is reprinted in the Appendix at page App.** 2A

## JURDISDICTION

The petitioner filed the case October 18, 1996 in United States District Court, Eastern District of North Carolina, Western Division under Age Discrimination in the Employment Act 29 U.S.C. 621 et. seq. And 28 U.S.C. sections 1331 and 1337.Title VII of the Civil Rights Act of 1964 and the Equal Pay Act- Title 29, Section 206. The demand was more than $10,000, case no. 5:96-CV-890-BR(2). A pretrial hearing was held January 12, 1998. The trial was held in United States District Court, February 3 to February 5, 1998. Motion not withstanding the verdict and motion for new trial was filed February 17, 1998. March 25, 1998 the Judge ruled on the motion for a new trial, and the motion was denied. April 3, 1998, the trial was appealed to the United States Court of Appeals for the Fourth Circuit. On August 31, 1998 the United States Court of Appeals decided the case. The United States Court of Appeals review the record and the district courts opinion and found no reversible error. On November 23, 1998 the United States Court of Appeals for the Fourth Circuit denied the petitioner a petition for rehearing, on Petition for Rehearing with Suggestion for Rehearing in Banc. January 14, 1999 the petitioner was granted an extension of time in United States Supreme Court, including March 22, 1999 to file the Petition for a Writ of Certiorari. Jurisdiction is conferred upon the Supreme Court to review the judgment of the Fourth Circuit Court. 28 U.S.C. Section 1254.

## STATUES INVOLVED IN THIS CASE

**Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 et. seq.**

**Age Discrimination in the Employment Act (ADEA) 29 U.S.C. §621 et.seq. and 28 U.S.C. Section §1331 and 1337.**

**Equal Pay Act – Title 29 United States Code Section 2069 (d) (1).**

## STATEMENT OF THE CASE

The petitioner was hired February 28, 1978 as a full time employee with the respondent. The petitioner was 33 year of age at the time of hire. At the time the petitioner was fired, she was 50 years of age. During the 18 years of employment everything went well, the petitioner attended work every day missing only 8 days in the length of employment due to illness. During the 18 years of employment the petitioner was never reprimanded in any way and at times got a $1000.00 bonus for doing excellent work. On two occasion the petitioner received the "Employee of the Month" award. The petitioner was responsible for payroll, cash receipts and various other job responsibilities and at times handled over 31 million dollars per year in receivables.

December 19, 1994, the petition turned 50 years of age. In March 1995, the petitioner's supervisor made the comment that the petitioner had turned 50 years of age, insurance had increased, and that the petitioner could be replaced with a younger worker and the company would not have to pay the younger worker the salary the petitioner was making. July 1995, during employee review the petitioner wasn't given a salary increase. Again the comment was make by the petitioners supervisor that the petitioner could be replaced with a younger worker at a lower wage. The petitioner at this time took the comment to the president of the company, and the President of the company agreed that the petitioner could be replace with a younger worker at a lower salary. The petitioner didn't think much of the first comment and took into consideration the length of service she had with the company. Again the comment

was made regarding the insurance increase, and the fact that the petitioner could be replaced with a younger worker.

October 1995 the comment was made to the petitioner for the third time. December 8, 1995 the petitioner was called in the office of the President of the company, and the petitioners' supervisor was present also. At this time the petitioner was offered a check for $2600.00 to resign from the company. The Petitioner was told by the respondent that if the petitioner didn't accept the check and resign, that the petitioner would be fired. The petitioner didn't accept the check and the petitioner was fired. The petitioner asked for a reason and the respondent advised it was his company, he could fire whom he wanted to and didn't have to give a reason. The petitioner was never given a reason for the termination; other than she could be replaced with a younger worker at a lower wage. The petitioner was pulled to the back door by the petitioner's supervisor and told to leave the premises of the respondent business and never return. The petitioner wasn't allowed to pick up any of her personal items. Within one week after the petitioner was fired, she was replaced with the younger male worker, age 26. During the 18 years of employment the petitioner was told she was the highest paid worker in the office, when in fact she was the lowest paid worker. The petitioners co-worker was making more salary that the petitioner and she were crossed trained to do the co-workers job duties. When the co-worker was hired January 1990, the petitioner trained the co-worker for the position which he was hired to fill.

After the petitioner was fired and replaced with the younger male worker, age 26, the petitioner filed a complaint with the Equal Employment Opportunity Commission on May 16, 1996, within 180 days of the date

of termination of the petitioner's employment. The termination of the petitioner's employment by the respondent constitutes a willful violation of 29 U.S.C. 623. The respondent was in violation of the Age and Sex Discrimination. The Equal Employment Opportunity Commission issued the petitioner the "Right to Sue" in United States District Court, Eastern District of North Carolina, Western Division. for Age and Sex Discrimination, and Equal Pay Act. The petitioner was employed from February 1978 until December 1995 when at the age of 50 the petitioner was fired. During the course of the trial in February 1998, the attorney representing the petitioner allowed people to testify that the petitioner had problems getting along with people in the office. The only person to testified, that left the company because of the petitioner, had left the company in 1980, and when the final cross-examination was completed, she didn't leave because of the petitioner, but left to take a higher paying job. The petitioner never knew of any problems until she reached 50 years of age. The attorney for the respondent type affidavits of misleading things about the petitioner and abusive comments. When the people testified, in United States District Court, the testimony was different than what had been prepared by the respondents' attorney, and was signed by the employees at his request. The judge questioned the attorney that was representing the petitioner, if he was going to allow this type of comments in the courtroom without an objection. The Attorney for the petitioner gave no response. The respondent attorney dwelled on the petitioner income taxes. The respondent did everything possible to avoid to the courts the way the petitioner was fired. The respondent claimed people left the company because of the petitioner. The attorney for the respondent had several people to testify against the petitioner, but the testimony was different than what was on the affidavits. This was the type of behavior the

respondents attorney took into consideration to cover up the way the petitioner was fired, and the fact the petitioner was replaced with a younger male worker. Another female, Linda Brobson, which was employed at a branch office, was fired at the age of 49 and replaced with a younger worker, age 23. Linda Brobson was subpoena to testify in behalf of the petitioner, but was never allowed to testify at the way the respondent fired her and replaced her with a younger worker, age 23. Linda Brobson had been employed with the company 12 years.

The petitioner was dismissed by the respondent because of age and gender, a violation of Age Discrimination in Employment Act, 29 U.S.C. 621 et seq., Title VII of the Civil Rights Act of 1964.

James O' Connor v Consolidated Coin Caterers Corporation - 56F 3d 542,545,548 (4th Cir 1995) rev'd 1165 CT 1307 (1996) No. 95-354. James O'Connor was fired at the age of 56 and replaced with a 40-year-old worker. This same type of firing happened to the petitioner, except the petitioner was 50 years of age and replaced with a 26-year-old worker. According to Age Discrimination in Employment Act of 1967, &2 et. seq. 29 U.S.C.A. & 621 et-seq. the petitioner established prima facie case of age discrimination if she can show she is a member of the protected age class, that she was performing adequately in her job, that she was fired and that she was replaced by a younger person after her dismissal. Determination that age was determining factor in the petitioner discharge, the discharge of the employee was supported by evidence that the employee was a good worker and that the employee was performing more than adequately and the employee was replaced by a younger worker. The ADEA prohibits discrimination on the basic of age- Age Discrimination in

Employment Act of 1967 & 2 et. seq. as amended 29 U.S.C.A. & 621 et. seq.

Fifty year old former employee did not have to show that employee who replaced her was under the age of 40 years of age in order to make out a prima facie case of age discrimination. It was enough that a younger worker replaced the employee. Carter v City of Miami – C.A. 11 (Fla) 1989, 870 F 2d, 578.

The Equal Pay Act makes it unlawful to pay one employee less that another who is performing equal work because of an employee's sex. The respondent violated the provisions of the Equal Pay Act by paying the petitioner a rate less than the rate at which the respondent paid employees of the opposite sex for equal work.

Title 29, United States Code, Section 2069 (d) (1), provided in pertinent part, that:

> No employer...subject to... this section shall discriminate between employees on the basic of sex by paying wages to employees...at a rate less that the rate at which he pays wages to employees of the opposite sex... for equal work on jobs, the performance of which requires equal skill, effort, responsibility, and which are performed under similar working conditions.....

The petitioner performed her duties successfully as an employee of the respondent from February 28, 1978 until December 8, 1995, the date the petitioner was discharged. The petitioner, without complaint from any agent or employee of the respondent concerning the quality of her performance. The petitioner was terminated by the respondent, R.W. Moore, President of R. W. Moore Equipment Company. The respondent

**replaced the petitioner, in the exact position with a younger male worker, who had no experience in the job and had never been employed by the respondent. The termination of the petitioner by the respondent was because of the petitioner's sex and age, which termination constitutes a violation of Title VII of the Civil Rights Act of 1964 and 29 U.S.C. Section 623 (A) (1). The petitioner never was reprimanded during the 18 years of employment, always-received good job reviews, received bonuses for doing excellent work. When the petitioner was 50 years old, the respondent wanted a younger worker to perform the duties, and when the petitioner didn't resign the petitioner was lead to the back door and push out, and told to leave and never return. The respondent then replaced the petitioner with the younger worker... at a lower wage. Had the petitioner never turned 50 year of age, the petitioner would still be employed with R. W. Moore Equipment Company. Yes, age and sex was the reason for the firing of the petitioner....**

## REASONS FOR GRANTING THE PETITION

At the age of 50, the petitioner was fired by the respondent corporation and was replaced by a 26-year - old worker. The complaint was filed with Equal Employment Opportunity Commission. A suit was filed in United States District Court alleging that the discharge violated the Age Discrimination in Employment Act of 1967 (ADEA). The District Court denied the petitioner a "Motion notwithstanding the Verdict, and the summary judgment was denied. The petitioner appeals the decision to the United States Courts of Appeals. The United States Court of appeals affirmed the holdings of United States District Court and affirmed it was no error in the decision of the United States District Court. The case presents the question whether a petitioner was discharged in violation of the Age Discrimination in Employment Act of 1967 (ADEA) 81 Stat. 602 as amended 29 U.S.C.§621 *et seq.* must show that the petitioner was replaced by someone outside the age group protected by the ADEA. The petitioner was fired and replaced with a younger male worker, age 26.

The petitioner, Virginia Early Riggan, was employed by the respondent from February 28, 1978 until December 8, 1995, when at the age of 50, she was fired. Within one week after the petitioner was fired, she was replaced with a younger male worker at a less salary. The petitioner can establish a prima facie case under McDonnell Douglas v Green, (411 U.S. 792 93 s ct 1817 36 l ed 2d 668), if she can prove that, (1) she was in the age group protected by the ADEA; (2) that she was discharged because of her age, (3) and at the time of

**discharge she was performing her job at a level that met the employer's legitimate expectations, (4) and following the discharge the petitioner was replaced by someone younger, or the replacement was 40 years old.**

**`Because the ADEA prohibits discrimination on the basic of age, and not class membership the fact that the petitioner replacement is substantially younger that the petitioner is far more indication of age discrimination than if the petitioner had been replaced with someone older. The questions remains unanswered, why would the respondent replace the petitioner with a younger worker is it wasn't for the fact that she was considered old and the respondent wanted "young blood" to replace the petitioner. Why would the respondent make the comment to the petitioner that she could be replace with a younger worker at a lower salary? When the petitioner refused to accept the check for $2600.00, which she was offered to resign, she was fired and replaced with the younger worker. Fifty year old former employee did not have to show that the employee who replaced her, was under 40 years of age in order make out a prima case of age discrimination, it was enough that she was replaced by a younger employee (Carter v City of Miami, CA 11 (FLA 1989 870 F 2nd 578). The ADEA forbids employment discrimination against employees age 40 or older (Rabinovitz v Enron Corp. N.D. Iowa 1995 902 F. Supp. 882)**

**The termination of the petitioner's employment by the respondent was because of the petitioner's sex and age, which termination constitutes a violation of Title VII of the Civil Rights Act of 1964 and 29 U.S.C. Section 623 (A) (1). The termination of the petitioner employment by the respondent constitutes a willful violation of 29 U.S. C. 623.**

**The petitioner invokes the jurisdiction of the Supreme Court pursuant to Title VII of the Civil Rights Act of 1964 and also the Age Discrimination in Employment Act, 29 U.S.C. 621 et.seq. and 28 U.S.C. Section 1331 and 1337. The matter in controversy arises under the Act of Congress relating to age and sex discrimination.**

**Prevarication by either R. W. Moore or Virginia Riggan is the crux of this case. Either she was the perennial problem employee who should have been discharged a decade before she actually was, despite the awards, raises, cash bonuses and satisfactory employee reviews which she unquestionably was given over that period. She more than met the reasonable expectations of her employer up to the moment of firing, which firing was due to the understandable but illegal motive to economize through letting go of Virginia Riggan on account of her age and sex. Virginia Riggan had always and forever been repeatedly praised for the accuracy, quality, quantity, efficiency, loyalty and yes, even cooperativeness of her work product. As her Employee of the Month Certificates of Excellence in January 1989, and April 1993, put it: "continuous demonstration of attitude, performance, reliability, goal achievement, and cooperation...." The petitioner contends that her former employer was motivated by the common underlying reason for age discrimination, namely a savings in cost."See Pfeifer v Lever Brothers Co. 693 F. Supp 358, 363 (D. Md.1987), aff'd 850 F. 2d 689 (4th Cir. 1988).**

**McDonell Douglas formula is not the only way for petitioner to make out age or sex discrimination. O'Connor v Condolidated Coin Caterers Corp. aff'd 56 F. 3d 542,545,548 (4th Cir. 1995), rev'd on other grounds, 116 S. Ct. 1307 (1996). The petitioner establish by a preponderance of the evidence, direct or indirect, that**

**but for the respondents motive to discriminate against her because of her age and sex, she would not have been discharged. As it was put in Burns v AAF-McQuay., 96 F3d 728 (4th Cir 96), at 731 " The Fourth Circuit recognizes two avenues of proof by which an employee can an ADEA violation, (1) under ordinary principles of proof using any direct or indirect evident relevant to and sufficiently probative of the issue or (2) under [ the method mentioned in the McDonnell Douglas paradigm]". Nonetheless, even if confined to the McDonnell Douglas paradigm, the petitioner has made out a prima facie case.**

**See Medley v Holly Farms Industries, 24 FEP 1330 (M.C. NC 1977). According to EEOC v Western Electric,713 F 2d. 1011 (4th Cir. 1983) petitioner makes a prima facie case by showing (1) she was in the protected age group (2) discharged (3) performing her job at a level which met employer's legitimate expectations, (4) her employer retained persons outside the protected age group. The petitioner contends that she carried her burden of showing that her performances were at the requisite level of employer expectations. Despite attempts by the respondent to shade the employment record, this is not a case with low job performance rating supported by any credible documentation. See Kraus v Sobel Containers, 915 F 2d. 227 (6th Cir. 1990). R. W. Moore can't credibly explain away his prior laudatory statements and only one undated, undeliverable note of his counseling the petitioner stands as any contemporaneous record of what he contends was conduct so deficient as to call for dismissal.**

**Petitioner doesn't rest on her prima facie case, however pretext is perhaps most strongly shown by discriminatory statements by the respondent. We are not dealing with just another need for "young blood"**

**comment, but repeated assertions in the course of formal and private performance reviews of her work in both March and July 1995, and the statements made by the supervisor, that the petitioner would never get another raise and that the respondent could replace her at anytime with a younger and cheaper worker. When the petitioner didn't pay attention to the discriminatory remarks and voluntarily terminate her employment, the petitioner was fired and replaced with a younger male worker at a lower wage. I plea with the Supreme Court to please grant me the Writ for Certiorari.**

## CONCLUSION

The United States District Court should have honored the motion from the petitioners for the Motion requesting a New Trial or Judgment notwithstanding the verdict.

The Fourth Circuit Court of Appeals ruling in this case should have been reversed and allowed the petitioner a new trial in the Motion notwithstanding the verdict. The petitioner was discharged because of age. The attorney representing the petitioner should have presented the supporting documents to prove to the courts, the petitioner was discharged because of her age. The attorney representing the petitioner should have had records subpoena to prove to the courts that the petitioner was replaced with a younger male worker. The petitioner put her confidence in her attorney, and felt confident that the attorney would represent her within the justice system. The questions remain unanswered as to what happened to the $67,000.00, which was offered at a pre-trial hearing and the petitioner agreed to accept, prior to the case going to trial. Why during the trial would the judge comment that the Equal Pay had been dropped from the case? Why would the judge drop sex discrimination, when no evidence was presented the petitioner was replaced with a younger male worker. The attorney representing the petitioner had advised that the records had been subpoena to prove to the courts that the petitioner was terminated because of her age. The attorney representing the petitioner immediately withdrew from the trial, leaving the petitioner with no one to represent her. The Fourth Circuit Court could not

**make a fair decision in the ruling when their had been no evidence to support the facts regarding age, and that age was a determining factor in the firing. The Fourth Circuit Court of Appeals should have reviewed the file more thoroughly and reversed the decision of the United States District Court. It is time that the laws be enforced in the Age and Sex Discrimination Act of 1967 § et seq 29 U.S.C.A. 621 et, seq. Why would an employer discharge a employee, when the employee has been working for 18 years, never reprimanded, got excellent job reviews, and never had a problem until the employee turns 50 years of age? Then all of a sudden the employee is fired and replaced with a younger male worker, age 26 at lower salary. The should be sufficient for the courts to determine, yes this a case of age and sex discrimination and the decision of the Fourth Circuit Court should be reversed and the petitioner allowed a new trial.**

**Respectfully submitted,**

**Virginia Early Riggan**

**Virginia Early Riggan**
**6609 Fayetteville Road**
**Raleigh, North Carolina 27603**

# APPENDIX

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**
**FOR THE FOURTH CIRCUIT**

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**NO. 98-1521**

**Virginia Early Riggan** **Plaintiff-Appellant,**

**verus**

**R.W. Moore Equipment Company** **Defendant-Appellee**

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**Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W.Earl Britt, Senior District Court Judge. (CA-96-890-5BR2)**

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**Submitted: August 13, 1998** **Decided: August 31,1998**

**Before WIDENER and WILKINS, Circuit Judges, and HALL, Senior Circuit Judge.**

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**Affirmed by unpublished per curiam opinion.**

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**Virginia Ealy Riggan, Appellant Pro Se. Ronald Hill Garber, Boxley, Bolton, & Garber, Raleigh, North Carolina for Appellee.**

**Unpublished opinion are not binding precedent in this circuit. See Local Rule 36(C).**

**PER CURIAM:**

**Appellant appeals the district court's order denying her motion for a new trial or judgment notwithstanding the verdict. See Fed. R. Civ P.59 (a), 50 (b). We have reviewed the record, and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Riggan v R. W. Moore Equip. Co., No. CA-96-890-5-BR-2 (E.D.N.C. Mar.25,1998). We deny Appellant's motion for oral argument and preparation of a transcript at government expense because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.**

**AFFIRMED**

**UNITED STATES COURT OF APPEALS**
**FOR THE FOURTH CIRCUIT**

**filed**
**November 23, 1998**

**No. 98-1521**
**CA-96-890-5-BR2**

**Virginia Early Riggan**
**Plaintiff-Appellant**

**R.W. Moore Equipment Company**
**Defendant- Appellee**

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**On Petition for Rehearing with Suggestion for Rehearing in Banc.**

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**The appellant's petition for rehearing and suggestion for rehearing in banc was submitted to this court. As no member of this court or the panel requested a poll on the suggestion for rehearing in banc, and**

**As the panel considered the petition for rehearing and is of the opinion that it should be denied,**

**IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.**

**For the court,**
**/s/ Patricia S. Connor**
**CLERK**

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NORTH CAROLINA**
**WESTERN DIVISION**

**No: 5:96-890-BR2**

**Virginia Early Riggan**
**Plaintiff**

**v**

**R.W. Moore Equipment Co.,**
**Defendant**

**On 17 February 1998 the plaintiff filed motions for a new trial or judgment notwithstanding the verdict. At plaintiff request she was allowed until 2 March 1998 to obtain a new attorney and file written memoranda, affidavits or other documents in support of the motion. On 19 February 1998 plaintiff filed, pro se, a Supporting Memorandum but no other documents have been filed. Upon full consideration the motions are DENIED.**

**This March 24, 1998.**

**W. EARL BRITT**
**Senior U.S. District Judge**

Supreme Court, U.S.
FILED
JUN 16 1999
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No. 98-1863

In The

# Supreme Court of the United States

VIRGINIA EARLY RIGGAN,

*Petitioner,*

v.

R.W. MOORE EQUIPMENT COMPANY,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit**

## BRIEF IN OPPOSITION

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8pp

## QUESTION PRESENTED

Did the Fourth Circuit Court of Appeals correctly decide that the United States District Court for the Eastern District of North Carolina, Honorable W. Earl Britt, Judge Presiding, was correct in denying the Plaintiff's Motion for a New Trial or Judgment Notwithstanding the Verdict after a jury verdict in favor of the defendant?

## PARTIES TO THE PROCEEDING

The plaintiff is Virginia Early Riggan, who is a citizen and resident of Raleigh, Wake County, North Carolina, and the defendant is R.W. Moore Equipment Company, which is a North Carolina corporation in good standing with its office and principal place of business in Garner, Wake County, North Carolina.

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## STATEMENT OF THE CASE

On her age discrimination claim, the plaintiff testified that Mr. Moore, President of the defendant, and John Meacham, Comptroller of the defendant, told her in the year before her dismissal that she could be dismissed and replaced with a younger worker. They testified that they did not say that, and the jury believed their testimony and returned a verdict for the defendant.

The plaintiff presented the testimony of four persons other than herself: Linda Brobson, David Hayes, Corbett Hall and Marie Sealey. Ms. Brobson attempted to claim that her employment had been terminated because of age discrimination, but she admitted during her testimony that her employment was terminated because she could not get her work orders done and could not meet deadlines. She testified that at the time of the termination of her employment she was fifty to seventy work orders behind which represents at least one month. David Hayes attempted to claim that his employment was terminated because of age discrimination, but he admitted that he was discharged because of conflict between himself and other employees and on one occasion he had a shouting match with a customer. He admitted that Mr. Moore had helped him to secure counseling to deal with his personal problem. Corbett Hall did not testify that his employment was terminated because of age discrimination and he testified that he voluntarily left the Company. Marie Sealey testified that she voluntarily left the Company because of conflict among various employees of the company. Ms. Sealey, also, testified that Judy Spurrier, a former employee of the Company, quit her employment because of having to deal with the plaintiff.

The defendant presented numerous witnesses who testified about the unpleasant and disruptive comments and acts of the plaintiff toward them and other employees. Most importantly, the defendant presented Terry L. Nichols and Barbara Lane as witnesses. Both of these women are former employees of the defendant and they each testified that they voluntarily terminated their employment with the defendant because it was so unpleasant and disruptive to have to deal with the plaintiff in their situation.

On the plaintiff's sex discrimination claim, the plaintiff's only evidence to support sex discrimination was that she was replaced by a male. That does not make a *prima facie* case. *Sahadi v. Reynolds Chemical*, 636 F.2d 1116 (6th Circuit, 1980).

## SUMMARY OF THE ARGUMENT

The jury returned a verdict of no age discrimination or sex discrimination. On her Motion for a New Trial or Judgment Notwithstanding the Verdict, the plaintiff asked Judge Britt to overrule the jury. He declined to do this, and the Fourth Circuit Court of Appeals affirmed his decision.

## ARGUMENT

The Plaintiff received a fair trial on her claims of age discrimination and sex discrimination. The jury chose not

to believe that she had been discriminated against on the basis of age or sex.

In the Complaint, the plaintiff did not raise or state a claim for relief under the Equal Pay statute. The first time the plaintiff attempted to inject his issue into the case was January 12, 1998, which was less than one month before the trial, when she presented her draft of the Pre-Trial Order to Magistrate Judge Denson in open court. Pre-Trial Order, paragraph I.F.2.

The issue is not mentioned in the Complaint. It did not arise in discovery because the only discovery by plaintiff was to take the deposition of Mr. Moore. This matter was not the subject of even one conversation between counsel for the plaintiff and counsel for the defendant.

The most salient point to surface was the plaintiff's statement in her Informal Brief in the Fourth Circuit, page 3, first full paragraph. At the time of the Pre-Trial Conference, the plaintiff made a demand of $67,000, and the defendant offered a settlement amount based upon the costs of defense. The Plaintiff conferred with her attorney, and she quotes him as saying that he "advised me, 'quote' I had cost R.W. Moore enough money, and that was what I wanted to do, that we were going to court."

The plaintiff has not cited any of the grounds under Rule 10 as being present in this case to support her Petition for Writ of Certiorari. This case is about the

application of contested facts, and the plaintiff complains that the jury did not find facts in support of her cause.

## CONCLUSION

The Fourth Circuit Court of Appeals was correct in affirming the decision of the District Court that the plaintiff's Motion for a New Trial on Judgment Notwithstanding the Verdict should be denied. The defendant – appellee prays this Court that the Petition for Writ of Certiorari of the plaintiff be denied.

This the 15th day of June, 1999.

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Supreme Court, U.S.
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No. 98-1863

# In The Supreme Court Of The United States

October Term 19 ——

VIRGINIA EARLY RIGGAN

*Petitioner*

V.

R.W. MOORE EQUIPMENT COMPANY

*Respondent*

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

## REPLY TO BRIEF IN OPPOSITION

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## 1. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

### (A) Final judgments rendered by the highest court in which a decision could be had, may be reviewed by the Supreme Court by Writ of Certiorari..

This case involves Age Discrimination in the Employment Act 29 U.S.C. 621 et seq., and Title VII of the Civil Rights Act of 1964, and the Equal Pay Act, Title 29, United States Codes Section 2069 (d) (1). This case involves a 50 year- old worker who was fired from her job of 18 years and replaced with a 26 year- old male worker. The reason for the termination of the petitioner employment wasn't because the company was down sizing, nor was the petitioner fired for not doing her job. The petitioner was fired due to her age and the fact that the petitioner was 50 years old. The petitioner employment wasn't terminated because the respondent was eliminating the petitioner job, nor was the respondent having a cut back in the labor force.

This is not an issue where the replacement was a 51 year-old worker whom was replaced by a 50 year -old worker. This is not a case where the petitioner was laid off and the employment was terminated eight months later. (*Sahadi* v *Reynolds Chemical*, 636 F 2d 1116 (6th Circuit, 1980).

This case involves a 50 year old worker whom was performing her job duties in a satisfactory professional manner, was never reprimanded during the 18 years of employment, always received good job reviews, received

**$1000.00 bonus for doing excellent work prior to the petitioners turning 50 year of age. After the petitioner turned 50 year of age, comments were made to the petitioner by the respondent's comptroller, John Meacham and R. W. Moore, President of R. W. Moore Equipment Company, that the petitioner could be replaced with a younger worker at a lower wage. Three times in 1995, the comment was made. The petitioner felt she had job security, after 18 years of employment. When the respondent R. W. Moore saw the petitioner wasn't going to voluntarily terminate her employment, on December 8th, 1995 at 4:30 PM on a Friday afternoon, the respondent R. W. Moore called the petitioner in his office and offered her a check for $2600.00 to resign. The petitioner asked for a reason. The respondent R. W. Moore advised the petitioner, quote " it was his company and he didn't have to give a reason". The petitioner didn't accept the check and R. W. Moore fired the petitioner. John Meacham, Comptroller lead the petitioner to the back door by the arm, and told the petitioner to leave the premises and never return, that the respondent R. W. Moore would mail the petitioner her belongings which were in her desk. The petitioner wasn't allowed to remove any of her personal belongings but did manage to get her Notary Seal. Within one week after the petitioner was fired, the petitioner was replaced with the younger worker. The replacement was William Lovette III, age 26.**

## STATEMENT TO BRIEF IN OPPOSITION

**Virginia Early Riggan, was fired by the respondent, R.W. Moore because of her age. It is a true statement that the respondent R. W. Moore and John Meacham did comment to the petitioner three (3) times in 1995 that the petitioner could be replaced with a younger worker at a lower wage. R. W. Moore nor John Meacham will never admit to these statements since this matter has gone to court. According to the deposition, which the petitioner has in her possession, R. W. Moore did admit he could have made the statement. Yes, R. W. Moore and John Meacham did make the remark to the petitioner and when the petitioner didn't take heed to there warning, the petitioner was fired without warning December 8, 1995 and the next week William Lovette III, replaced the petitioner at a lower wage.**

**It is a true statement, Linda Brobson testified. Linda was never asked during her testimony, how she was fired? How she was replaced with a 23 year -old worker, Regina Whaley. Linda Brobson wasn't fired, because she couldn't complete her work orders in a timely fashion, Ms. Brobson was fired because she was almost 50 year old, and R. W. Moore, President of R. W. Moore Equipment Company wanted a younger worker to work in his Wilmington Branch. Linda Brobson had done her job in a satisfactory professional way for the respondent for 12 years and never had a problem until she was almost 50 years of age. The attorney for the respondent in his reply to the Brief in Opposition should have given the correct facts as to what really happened to Linda Brobson. David Hayes was mentioned in the Brief in Opposition. David Hayes was on Christmas vacation**

**and was called to the office and fired and replaced with a younger worker. Marie Sealey testified on behalf of the petitioner. Ms. Sealey testifed she left the company voluntarily, not because of the petitioner. Ms. Spurrier left the respondent's company, not because of the petitioner, but to accept at job with the State of North Carolina.**

**The respondent's attorney had Terry Nicholas to testify against the petitioner. Ms. Nicholas voluntarily left the respondent in the 80's to accept a better paying job. The petitioner continued her employment with the respondent more than ten (10) years after Ms. Nicholas quit her employment. Barbara Lane was called to testify. Ms. Lane was hired in June 1996 to work for the respondent. Ms. Lane had an attendance problem, missing 15 days of work and also took a week vacation within 6 months of employment. The respondent became upset at Ms. Lane and took Ms. Lane off straight salary and put her on the time clock. Ms. Lane became very upset over the action of the respondent and voluntarily walked off the job December 8, 1995. Ms. Lane didn't terminate her employment because of the petitioner, Ms. Lane terminated her employment because of the decision Mr. Moore made regarding her salary. Why can't the attorney for the respondent tell the truth, and quit trying to cover up the way the respondent fired the petitioner. The attorney for the respondent had Sylvia McLamb to testify against the petitioner. Ms. McLamb worked in the New Bern office of R.W. Moore Equipment Company, which is 135 miles from the home office where the petitioner worked. The petitioner had no dealing with Ms. McLamb except on a bi-weekly basic when the petitioner was handling the payroll. There is no way Ms. McLamb knew what type of person the petitioner was when she only saw the petitioner one time a year. This is just another way the respondent attorney used the time**

**to cover up the way the petitioner was fired. Yes, Virginia Early Riggan was fired because of her age, and age was the determining factor in her being fired from her job. The attorney for the respondent spent many hours dwelling on the petitioner income taxes, which had nothing to do with the purpose of the case. This was to take up the courts time.**

**The petitioner didn't receive a fair trial in United States District Court on her claim of Age and Sex Discrimination and Equal Pay. The United States District Court should have granted the petitioner "a Motion for a New Trial or Judgment Notwithstanding the Verdict." The 4th Circuit Court should have reversed the decision of the United States District Court. The petitioner has in her possession documents which were alternate, after the petitioner agreed to accept the offer of $67,000.00.**

**The question remain unanswered as to what happened to the $67,000.00 offer and the petitioner agreed to accept. This was not a demand by the petitioner as the attorney for the respondent continues to dwell on. This was an offered settlement and agreed upon by the two attorneys' and the petitioner. Never has the petitioner made a demand for any amount of money. The attorney for the respondent cannot use the excuse that the offer of $67,000.00 was for the cost of the defense. There was no cost of defense, the attorney for the petitioner took the case on a 33-1/3% contingence fee basic, and the petitioners has a signed contract to that effect.**

**Virginia Early Riggan wasn't fired from her job because she was unpleasant and disruptive to other employees. Virginia Early Riggan was the same person February 28, 1978 that she was December 8th, 1995. The only difference is Virginia Early Riggan was 18 years older. Yes, Virginia Early Riggan was performing her job duties to the satisfaction of the respondent, and had the petitioner never turned 50 year of age, she would continued to be employed with R. W. Moore Equipment Company.**

**It was the decision of the Equal Employment Opportunity Commission to issue the "Right to Sue" to the petitioner in this matter. It was the decision of the petitioner to continue this case to the 4th Circuit Court, in hopes of getting a fair decision of the courts. This is a prima facie case of Age Discrimination.**

**Yes, Virginia Early Riggan was fired because of Age and Sex Discrimination, as described in the *James O'Connor* v *Consolidated Coin Caterers* Corp. (95-354) 56f 3d 542, 545, 548 ( 4th Cir), Rec'd 116 s.ct 1307 (1996). Virginia Early was within the protective age group, age 40 and over. Virginia Early Riggan can establish a prima facie case of Age & Sex Discrimination under the *McDonald Douglas Corp.* v *Green* 411-U.S. 792 93 s.ct. 1817 36L ed 2d 668.**

**The level of proof must fall against the respondent. The respondent should present to the courts signed reprimands by the petitioner, of any warning regarding unpleasant or disruptive comments. The respondent should produce documents to the courts, to prove to the courts the truth of case, that William Lovette III replaced the petitioner within one week after the petitioner was fired. William Lovette III had no experience in the**

**position he was hired for and had never been employed by the respondent prior to December 8, 1995.**

**Virginia Early Riggan wasn't fired from her employment because she was unpleasant as described in the Brief of Opposition filed by the respondent attorney. If the petitioner was such a terrible, unpleasant and disruptive person, which is a false statement by the respondents' attorney, why did R. W. Moore President of R. W. Moore Equipment Company keep the petitioner employed for 18 years. If this was the case the petitioner should have been terminated in 1978, not 18 years later when the petitioner was 50 years old. Virginia Early Riggan wasn't the abusive person claimed to be by the respondent, this is the way the respondent attorney covers up the way the respondent fired the petitioner. According to the (ADEA) Age Discrimination in Employment Act of 1967, the petitioner should be protected, because the petitioner was within the protective age group and was replaced by someone outside the protected age group. The petitioner can prove to the courts she was within the protective age group.**

**After the petitioner was fired, the petitioner took a job at less wages with very few benefits. According to Dr. James Bellard with Raleigh Psychiatric, whom saw the petitioner after she was fired indicated in his deposition, the petitioner is suffering from Post Tramatic Stress, a medical condition which was brought on by the firing and the way the petitioner was fired. The petitioner had never suffered such a condition until after she was fired. The petitioner has a transcript of the deposition of Dr. James Bellard to back up this evidence. Never one time has the issue referred to the medical condition, the firing has cause the petitioner. This firing left such a mental condition on the petitioner that she was unable to drive a**

**car for many months. Even at her new job she had constant fear that she will be fired.**

**Yes this is a case of Age and Sex Discrimination, and Equal Pay. This Equal Pay was where the $67,000.00 offer was offered. The break down was the difference in my salary and my co-worker salary, the 33-1/3% contingence fee for the petitioners' attorney and the remaining was for the way the respondent fired the petitioner. Again there was never a demand for $67,000.00 from the petitioner. This was an agreed amount between the two (2) attorneys' and the petitioner. The Equal Pay was discussed with the Equal Employment Opportunity Commission, prior to the case going to court, before any suit was filed. The respondent had to produce the break-down of the salary of the co-worker, Billy Barton, for comparison with the salary of the petitioner.**

## CONCLUSION

**The 4th Circuit Court of Appeals was wrong in affirming the decision of the United States District Court. The 4th Circuit Court should have granted the petitioner a "Motion for a New Trial or Judgment Notwithstanding the Verdict. The petitioner respectfully request the Supreme Court to grant the Petition for Writ of Certiorari in favor of the petitioner.**

**This the 16th day of July, 1999.**

**Respectfully submitted,**

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